

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke)
Probation Against:)

) File No. D1-2005-167956

FREDERICK RAYMOND, M.D.)

Physician's and Surgeon's)
Certificate No. G 32652)

Respondent.)
_____)

DECISION

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California as its Decision in the above entitled matter.

This Decision shall become effective at **5:00 p.m. on** June 8, 2011.

IT IS SO ORDERED June 1, 2011



Linda K. Whitney
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES, III
Supervising Deputy Attorney General
3 RICHARD D. MARINO
Deputy Attorney General
4 State Bar No. 90471
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against:

13 **Fredrick Raymond, M.D.**

14 Physician's and Surgeon's Certificate No.
G32652

15 Respondent.

Case No. D1-2005-167956

16 **STIPULATED SURRENDER OF**
17 **LICENSE AND ORDER**

18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the Medical Board of California of the Department of Consumer
20 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
21 will be submitted to the Board for approval and adoption as the final disposition of the Petition to
22 Revoke Probation.

23 **PARTIES**

24 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
25 California. She brought this action solely in her official capacity and is represented in this matter
26 by Kamala D. Harris, Attorney General of the State of California, by Richard D. Marino, Deputy
27 Attorney General.

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1 15. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following Order:
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4 **ORDER**

5 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. , issued to
6 Respondent Frederick Raymond, M.D., is surrendered and accepted by the Medical Board of
7 California.

8 1. Respondent shall lose all rights and privileges as a physician and surgeon in
9 California as of the effective date of the Board's Decision and Order.

10 2. Respondent shall cause to be delivered to the Board his pocket license and, if one was
11 issued, his wall certificate on or before the effective date of the Decision and Order.


12 3. If Respondent ever files an application for licensure or a petition for reinstatement in
13 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
14 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
15 effect at the time the petition is filed, and all of the charges and allegations contained in Petition
16 to Revoke Probation No. 19-2009-200203 shall be deemed to be true, correct and admitted by
17 Respondent, and that those charges constitute cause for discipline when the Board determines
18 whether to grant or deny the petition.
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ACCEPTANCE

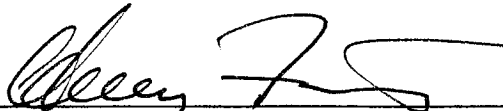
I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Henry Fenton. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 4-9-11


FREDERICK RAYMOND, M.D.
Respondent

I have read and fully discussed with Respondent Frederick Raymond, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 4-12-11


HENRY FENTON
Attorney for Respondent

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Dated: March 28, 2011

KAMALA D. HARRIS
Attorney General of California
E. A. JONES, III
Supervising Deputy Attorney General

Phil Martin

Attorneys for Complainant

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Exhibit A

Petition to Revoke Probation No. D1-2005-167956

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *October 4 2010*
BY *[Signature]* ANALYST

1 EDMUND G. BROWN JR.
Attorney General of California
2 PAUL C. AMENT
Supervising Deputy Attorney General
3 RICHARD D. MARINO
Deputy Attorney General
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5 Los Angeles, CA 90013
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E-mail: Richard.Marino@doj.ca.gov

7 *Attorneys for Complainant*

8
9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Petition to Revoke
13 Probation Against:

Case No. D1-2005-167956

14 **FREDERICK RAYMOND, M.D.**
15 **2516 Canyon View**
Pasadena, CA 91107

PETITION TO REVOKE PROBATION

16 Physician and Surgeon's Certificate No.
G32652

17 Respondent.

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19
20 Complainant alleges:

21 **PARTIES**

22 1. Linda K. Whitney (Complainant) brings this Petition to Revoke Probation solely in
23 her official capacity as the Executive Director of the Medical Board of California, Department of
24 Consumer Affairs.

25 2. On or about August 3, 1976, the Medical Board of California issued Physician and
26 Surgeon's Certificate Number G32652 to Frederick Raymond, M.D. (Respondent). Unless
27 renewed, Respondent's certificate will expire on October 31, 2011.
28

3. In a disciplinary action entitled *In the Matter of Accusation Against Frederick Raymond, M.D.*, Case No. 11-2005-167956, OAH No. L2007020399, the Medical Board of California issued a decision, effective November 16, 2007, in which Respondent's Physician and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's physician and surgeon's certificate was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

A. Section 2004 of the Code provides:

"The Division of Medical Quality^[1] shall have the responsibility for the following:

“(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

“(c) Carrying out disciplinary actions appropriate to findings made by a medical quality review committee, the division, or an administrative law judge.

“(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

“(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.”

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "Board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board

1 B. Section 2227 of the Code provides that a licensee who is found guilty
2 under the Medical Practice Act may have his or her license revoked, suspended for a
3 period not to exceed one year, placed on probation and required to pay the costs of
4 probation monitoring, or such other action taken in relation to discipline as the Division
5 deems proper.

6 C. Section 2234 of the Code, in pertinent part, provides that the Medical
7 Board of California "shall take action against any licensee who is charged with
8 unprofessional conduct."
9

10 D. Section 2239, subdivision (a), of the Code, in pertinent part, provides that
11 "[t]he use . . . or administering to himself . . . any controlled substance . . . constitutes
12 unprofessional conduct."
13

14 CAUSE TO REVOKE PROBATION

15 (Obey All Laws)

16 5. At all times after the effective date of Respondent's probation, Condition 6 stated:

17 "Respondent shall obey all federal, state and local laws, all rules governing the
18 practice of medicine in California, and remain in full compliance with any court-ordered
19 criminal probation, payments, and other orders."

20 6. Respondent's probation is subject to revocation because he failed to comply with
21 Probation Condition 6, referenced above, by violating Business and Professions Code section
22 2239, subdivision (a), in that he used or administered to himself a controlled substance—namely,
23 methamphetamine. The facts and circumstances regarding this violation are as follows:

24 A. On or about and during June 2009, Respondent provided a random biological
25 fluid sample as he was required to do under Term and Condition No. 2 of his
26 probation which, in pertinent part, provides:
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1 "Respondent shall immediately submit to biological fluid testing, at Respondent's
2 expense, upon the request of the [Board] or its designee. A certified copy of the any
3 laboratory test results may be received in evidence in any proceedings between the Board
4 and Respondent."

5 B. Respondent's biological fluid sample was tested by Quest Diagnostics
6 laboratory. Respondent's biological fluid sample contained the prescription
7 drug, methamphetamine, a Schedule II controlled substance with a high
8 potential for abuse and addiction.

9 C. During two interviews with representatives of the Medical Board of California,
10 Respondent was questioned about the positive result for methamphetamine. On
11 both occasions, Respondent stated that, in June 2009, in order to lose weight for
12 his daughter's upcoming wedding, he ingested weight loss or diet pills given to
13 him by his then finance.² At the first interview, conducted on September 21,
14 2009, Respondent stated that he had taken only one pill and that the pill was
15 pink in color. At the second interview, conducted on July 19, 2010,
16 Respondent stated that he took 30 to 40 pills that were obtained from his
17 finance's friend whose identity was unknown to Respondent. Respondent
18 stated that the pills made him feel "energized." Respondent further stated that
19 he and his finance each lost ten pounds using the pills.

20 D. Using, ingesting or self-administering by a physician and surgeon of a Schedule
21 II controlled substance such as methamphetamine without a prescription is
22 contrary to the laws governing the practice of medicine in this state.

23 DISCIPLINE CONSIDERATIONS

24
25 7. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges that on or about November 16, 2007, in a prior disciplinary action entitled *In*

27
28 ² The pills were not marked and were not obtained pursuant to a prescription.

1 *the Matter of the Accusation Against Frederick Raymond, M.D.* before the Medical Board of
2 California, in Case No. 11-2005-167956, Respondent's license was revoked with revocation
3 stayed and Respondent being placed on probation for five (5) years³ with the term and condition,
4 among others, that he obey all laws.

5 8. To determine the degree of discipline, if any, to be imposed on Respondent,
6 Complainant alleges that on or about January 10, 2006, in a prior criminal proceeding entitled
7 *People v. Raymond* in Los Angeles Superior Court, Case No. 5PA03078, Respondent was
8 convicted of reckless driving, in violation of Vehicle Code section 23103, a misdemeanor.
9 Respondent was placed on probation with a terms and condition, among others, that he obey all
10 laws. The record of the criminal proceeding is incorporated as if fully set forth.

11 9. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges that on or about September 6, 2000, in a prior criminal proceeding entitled
13 *People v. Raymond* in Los Angeles Superior Court, Case No. 0PA02997, Respondent was
14 convicted for violating driving with a .08 or greater blood alcohol level, in violation of Vehicle
15 Code section 23152, subdivision (b), a misdemeanor. Respondent was placed on probation with a
16 term and condition, among others, that he obey all laws. The record of the criminal proceeding is
17 incorporated as if fully set forth.

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27 _____
28 ³ See paragraph 3, *ante*.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking the probation that was granted by the Medical Board of California in Case No. 11-2005-167956 and imposing the disciplinary order that was stayed thereby revoking Physician and Surgeon's Certificate No. G32652 issued to Frederick Raymond, M.D.;

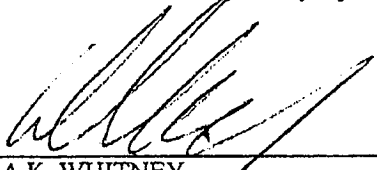
2. Revoking or suspending Physician and Surgeon's Certificate No. G32652, issued to Frederick Raymond, M.D.;

3. Revoking, suspending or denying approval of Frederick Raymond, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code; and,

4. Ordering Frederick Raymond, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and,

5. Taking such other and further action as deemed necessary and proper.

DATED: October 4, 2010


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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50718705.doc

Exhibit A

Decision and Order

Medical Board of California Case No. 11-2005-167956

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)

Against:)

FREDERICK RAYMOND, M.D.)

OAH No: L2007020399

Case No: 11-2005-167956

Physician's and Surgeon's)

Certificate No. G-32652)

Respondent.)

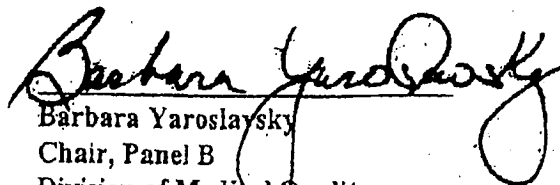
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective at 5:00 p.m. on November 16, 2007.

DATED October 17, 2007

MEDICAL BOARD OF CALIFORNIA


Barbara Yaroslavy
Chair, Panel B
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FREDERICK RAYMOND, M.D.

Physician and Surgeon Certificate
No. G 32652

Respondent.

Case No. 11-2005-167956

OAH No. L2007020399

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on September 5-7, 2007, in Los Angeles, California.

Richard D. Marino, Deputy Attorney General, represented David T. Thornton (Complainant), then-Executive Director of the Medical Board of California.

Henry R. Fenton, Attorney at Law, the Law Offices of Fenton and Nelson, represented Frederick Raymond, M.D. (Respondent). Respondent was present on each day of hearing.

At hearing, Complainant amended the Accusation as follows: on page 1, line 23, the year, "1976" was added after the word and number, "August 3."

The parties submitted the matter for decision on September 7, 2007.

FACTUAL FINDINGS

1. Complainant, in his official capacity, filed the Accusation on January 5, 2007; this action then ensued. On February 5, 2007, Respondent filed the Notice of Defense.

The Parties' Contentions

2. Complainant contends Respondent's two criminal misdemeanor convictions provide cause to discipline Respondent's medical license, pursuant to Business and Professions Code sections 2236, subdivision (a), 2239, subdivision (b), and 2234.

3. While he acknowledged both convictions involved his driving under the influence of alcohol, Respondent contended his convictions were isolated incidents. Respondent further contended he is not an alcoholic, and therefore his convictions should not result in professional discipline.

Respondent's Certification and Background

4(a). The Medical Board of California (the Board) issued physician and surgeon certificate number G 32652 to Respondent on August 3, 1976. The license expires on October 31, 2009, unless renewed. The Board has never disciplined Respondent's license before the filing of the instant Accusation.

4(b). Respondent is an ophthalmologist. He received his medical degree from the Keck Medical School at the University of Southern California (USC) in 1975. He completed a flexible medical and surgical internship at the Los Angeles County-USC Medical Center in 1976. He completed an ophthalmology residency at the same hospital in 1979. Respondent is a member of the American Academy of Ophthalmology, the California Medical Association, and the Los Angeles Medical Association.

Respondent's Recent Conviction

5. On January 10, 2006, following Respondent's nolo contendere plea, the Los Angeles County Superior Court, in case number SPA03078, convicted Respondent of violating Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor. The crime is substantially related to a physician's qualifications, functions, and duties. (See Legal Conclusion 8.)

6. The Superior Court suspended imposition of Respondent's sentence and placed him on summary probation for two years. The terms and conditions of Respondent's probation included, among others, one day in the county jail (less credit for one day), payment of \$979 in fines and restitution, and completion of an 18-month alcohol treatment or counseling program, to be completed by August 10, 2007. The sentencing court ordered Respondent not to operate any motor vehicle within six hours of consuming alcohol.

7. Respondent enrolled in the High Road Program on December 13, 2005. The High Road Program constituted the 18-month alcohol counseling/treatment program ordered by the sentencing court. Respondent completed the program on June 20, 2007.

8. Respondent was timely in paying the fines and restitution ordered by the sentencing court.

9. The facts underlying Respondent's conviction are that, in Pasadena, California, on the evening of June 29, 2005, after having wine with his dinner, Respondent drove his truck, approached an intersection, and without stopping, crashed into three cars that were waiting at the intersection.

10. At hearing, Respondent explained that, on the day of the accident, he was overworking and dealing with personal/family issues; Respondent went to dinner with a friend and drank wine with his dinner. Respondent knew he should not drink and drive, a lesson he acknowledges was imparted to him when he attended a court-ordered first offender alcohol counseling/treatment program. (See Factual Finding 13, *post.*) However, in a moment of bad judgment, he nonetheless decided to drive home that night. According to Respondent, he approached the intersection, stopped at the light, and fell asleep while he began accelerating as the light turned green. Respondent crashed into the three cars at the intersection, woke up, and then stopped his truck to deal with the accident. Respondent testified that he fell asleep because he was overworked, stressed and tired, not because he was intoxicated. The evidence, however, established Respondent's accident was caused by his intoxication. (See Legal Conclusion 9.)

11. The police report described the resulting damage to two cars as minor but the damage to one car was described as major. One driver's injuries were described as, "pain to neck, head injury, bruises on left knee, chest pain." Another driver's injuries were described as, "complaint of pain to neck, pain in right shoulder." The third driver suffered no injuries. A police officer at the scene wrote the following in the police report: "[Respondent] said he wasn't driving fast, and didn't see the red light approaching. [Respondent] said he tried to brake in time, but struck several cars in the process." The police officer also wrote, "I could smell a strong odor of alcohol coming from his person." Respondent told the police he had had one glass of wine at dinner. In the police report, Respondent's eyes were described as "bloodshot" and "watery," and Respondent's speech was described as "slurred." The police determined Respondent's blood alcohol concentration that night was .08 percent.

Respondent's Earlier Conviction

12. On September 6, 2000, following Respondent's nolo contendere plea, the Los Angeles County Superior Court, in case number 0PA02997, convicted Respondent of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol), a misdemeanor. The crime is substantially related to a physician's qualifications, functions, and duties. (See Legal Conclusion 8.)

13. The Superior Court suspended imposition of Respondent's sentence and placed him on summary probation for three years. The terms and conditions of Respondent's probation included one day in the county jail (less credit for one day), payment of \$ 1,208 in fines and restitution, and completion of a first offender alcohol counseling program. Among other terms and conditions, the court restricted Respondent's driving for 90 days, to travel to and from work and the first offender program.

14. The facts underlying Respondent's conviction are that, on or about July 21, 2000, Respondent drove under the influence of alcohol in Los Angeles County after having drunk alcohol at dinner.

Opinion Testimony Regarding Respondent's Alcohol Use

15. Respondent proffered the opinions of Dr. Richard S. Sandor, a psychiatrist. Sandor received his medical degree from the University of Southern California School of Medicine in 1972. Sandor completed a straight medicine internship at the Los Angeles County-USC Medical Center in 1973. He completed a residency in pathology at the UCI Medical Center in 1974, and a residency in psychiatry at the UCLA Neuropsychiatric Institute in 1980. Sandor is a Diplomate of the American Board of Psychiatry and Neurology (since 1985). He is certified in alcoholism and other drug dependencies by the American Society of Addiction Medicine (since 1986), and he has a certificate of added qualification in addiction psychiatry from the American Board of Psychiatry and Neurology (since 1993). Since 1987, Sandor has been a member of the clinical faculty at the UCLA Neuropsychiatric Institute, and since 1988, he has maintained a private practice in psychiatry and addiction medicine.

16. Sandor met and evaluated Respondent. Sandor opined Respondent is not an alcoholic, does not abuse alcohol, and is not dependent on alcohol. Sandor explained that it would be highly unlikely for Respondent to attain his medical degree and maintain a successful practice if he was an alcoholic. In Sandor's experience, most alcoholics create barriers to their own success well before their middle age (Respondent is over 50 years old). Sandor did not believe Respondent was an appropriate candidate for the physician diversion program.¹ Sandor also explained that Respondent's undisputed impairment, at a blood alcohol concentration of .08 percent, demonstrated a low tolerance to alcohol. That low tolerance, explained Sandor, supported the assertion that Respondent did not drink alcohol regularly or in large amounts. Sandor believes Respondent's two convictions were isolated incidents. Sandor also believes Respondent now understands he cannot drink and drive.

17. Respondent also proffered the opinions of Dr. Brian P. Jacks, a psychiatrist who received his medical degree from the University of Toronto in Ontario, Canada. He holds a California medical license and is board certified by the American Board of Psychiatry and Neurology (since 1974). Jacks is also a Clinical Professor of psychiatry at USC.

¹ The diversion program is administered by the Board to monitor the recovery of physicians who have abused alcohol or other drugs, or who have a mental health problem which may affect their ability to practice medicine safely. It is an intensive program, with a primary mission to protect the public.

18. Jacks met and assessed Respondent and opined, similar to Sandor, that Respondent is not an alcoholic, does not abuse alcohol, and is not alcohol dependent. Jacks also found no evidence of early drinking. Jacks opined, similar to Sandor, that both of Respondent's convictions were isolated incidents and that Respondent was not appropriate for the Board's diversion program. Jacks further believed placing Respondent on probation would not be useful because Respondent is already taking his own rehabilitative steps.

19. Respondent additionally proffered the opinions of James Conroy, a licensed marriage and family therapist (since 1979). Conroy has been a group facilitator for the Board's diversion program since 1996. Conroy first met Respondent in April 2007, and developed an individualized monitoring program for him. Conroy met regularly with Respondent, had regular telephone contact with him, stayed in contact with Respondent's work peers and treatment providers, and performed urine and saliva testing on him. Conroy believes Respondent is not appropriate for the diversion program because he does not believe Respondent is an alcoholic, does not abuse alcohol, and is not alcohol dependent. Conroy concluded that Respondent has shown a life pattern of low to moderate drinking and opined that such a profile is not appropriate for the diversion program. Conroy acknowledged it is always possible that persons with alcohol problems will relapse while rehabilitating, but that the chances of a relapse go down significantly after five years in a rehabilitation program.

Respondent's Self-Description and Reputation

20. At hearing, Respondent described himself as someone who, over his life, has rarely or at most, infrequently used alcohol. According to Respondent, in the recent past, he has had an occasional glass of wine with dinner. Respondent acknowledged that on the occasion of both incidents that led to his convictions, he made poor choices that he described as mistakes, but he asserted he was not an alcoholic and did not have a problem with alcohol. Respondent permanently abstained from alcohol approximately one year ago. Respondent expressed remorse and embarrassment regarding his convictions.

21. Respondent runs a busy ophthalmology practice; he is well regarded by his staff and patients. Apart from his practice, Respondent volunteers for a non-profit agency called the Greater Pasadena Aid Fund. The organization provides emergency assistance to persons with terminal illnesses. Respondent has three adult daughters; he has consistently been involved in their lives.

LEGAL CONCLUSIONS

The Law

1. Business and Professions Code section 2227 states in pertinent part:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section

11371 of the Government Code . . . and is found guilty . . . may, in accordance with the provisions of this chapter:

[¶] . . . [¶]

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

[¶] . . . [¶]

(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

2. Business and Professions Code section 2234 states in pertinent part:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating . . . directly . . . any provisions of this chapter.

3. Business and Professions Code section 2236 states in pertinent part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

(c) . . . The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A . . . conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

4. Business and Professions Code section 2239 states in pertinent part:

(a) The use . . . of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A . . . conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 . . . when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence

5. California Code of Regulations, title 16, section 1360 states in pertinent part:

For the purposes of . . . suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the [Business and Professions] code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare

6. California Code of Regulations, title 16, section 1360.1 states in pertinent part:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his . . . eligibility for a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

Discussion

7. Complainant must prove his case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

8. Even though Respondent's second conviction was for reckless driving, Respondent's two convictions involved his driving while under the influence of alcohol. The more recent conviction resulted in harm to other motorists and their automobiles. Respondent's actions underlying those convictions demonstrated a disregard for the lives and property of others, and an acknowledgement that when Respondent is impaired by alcohol, he takes actions that can and do injure others. (Cal. Code Regs., tit. 16, § 1360.1, subd. (a).) The Legislature has mandated that convictions such as Respondent's convictions constitute unprofessional conduct. (Bus. & Prof. Code, § 2239, subd. (a).) In putting forth his defense, Respondent did not provide sufficient evidence to prove that, in the future, he would not drive while intoxicated. Thus, Respondent's two convictions evidence his potential unfitness to perform his duties as a physician "in a manner consistent with the public health, safety[, and] welfare" (Cal. Code Regs., tit. 16, § 1360), and therefore Respondent's two convictions are substantially related to the qualifications, functions, and duties of a physician and surgeon. (*Ibid.*)

9. Regarding his second conviction (reckless driving), Respondent argued that he fell asleep while driving due to exhaustion, not intoxication. However, the evidence disproved Respondent's argument. First, the evidence did not establish that Respondent ever told the police that he fell asleep because he was tired. Further, the police officer who recounted Respondent's version of events noted that Respondent said he simply did not see the red light and could not brake in time. (Factual Finding 11.) Second, the evidence proved Respondent's blood alcohol concentration was .08 percent and that the police "smelled a strong odor of alcohol coming from his

person." (*Ibid.*) Third, the police described Respondent's eyes as bloodshot and watery, and Respondent's speech as slurred. (*Ibid.*) Thus, the evidence established Respondent was intoxicated by alcohol when he crashed into the three cars on June 29, 2005.

10. Respondent argued he was not an alcoholic and therefore did not merit license discipline, or at most, merited mild discipline. Respondent pointed to the opinion testimony of Drs. Sandor and Jacks, and James Conroy to support his argument. However, this matter involves assessing the public's safety within the context of Respondent's criminal actions. While Respondent may or may not be an alcoholic, he still chose to drive while impaired by alcohol, even after having completed a first offender alcohol counseling program and having served a three-year criminal probation. Furthermore, if Respondent has a low tolerance to alcohol, as Dr. Sandor concluded, the public's safety may be at increased risk, since Respondent may become impaired by alcohol sooner than the average person, and he has shown that when he has become impaired, he has taken actions that have endangered the public. Thus, not being an alcoholic does not provide Respondent with a defense to license discipline.

11. Respondent also argued that his two convictions were the result of isolated incidents that did not reflect Respondent's common and regular activities (drinking and driving). However, as Complainant's counsel argued, the likelihood that, solely on these two occasions, Respondent drove while intoxicated, and was consequently arrested and convicted of Vehicle Code violations, is extremely low. It is more likely that Respondent engaged in such conduct more regularly and, as to the earlier conviction, Respondent was driving in an area where he was observed by law enforcement on that particular occasion. As to the recent conviction, the resulting accident precipitated the police's involvement. Therefore, Respondent's argument that these were two isolated incidents was not established and did not afford him a defense.

12. Respondent has taken several steps toward rehabilitation. He paid his court-ordered fines, and completed his first criminal probation. (Cal. Code Regs., tit. 16, § 1360.1, subd. (d).) Respondent testified credibly that he has abstained from alcohol for the past year. (Cal. Code Regs., tit. 16, § 1360.1, subd. (f).) He demonstrated remorse and embarrassment for his actions. (*Ibid.*) While those acts are to be commended, there was insufficient evidence to prove he would not drink and drive again, or drink and act in other ways that might endanger the public. Respondent committed his second offense after a criminal conviction and after having completed a first offender counseling program. Respondent now points to the fact that he has completed the court-ordered 18-month alcohol counseling program. Saliently however, Respondent currently remains on criminal probation until January 2008. That Respondent has complied with court-ordered programs and has recently abstained from alcohol does not merit great weight while under probationary constraints. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, his

rehabilitative efforts thus far were inadequate to prove Respondent's medical license merited no discipline.

Conclusions

13. Respondent's convictions constitute unprofessional conduct, and are substantially related to a physician's qualifications, functions, and duties. Respondent failed to provide sufficient evidence that he is fully rehabilitated, though he is undoubtedly working toward that end. In order to safeguard the public, it is therefore appropriate to discipline Respondent's medical license by revoking Respondent's license, staying the revocation, and placing Respondent on probation for five years. (Bus. & Prof. Code, §§ 2227, subd. (a)(3); 2234, subd. (a), 2236, subd. (a); 2239, subds. (a) & (b).) Drs. Sandor and Jacks, and James Conroy were unanimous that the Board's physician diversion program was not appropriate for Respondent. The opinions of Sandor, Jacks, and Conroy on this point were compelling. Nevertheless, to ensure the public's safety, Respondent must undergo some sort of alcohol abuse counseling, short of the diversion program, to thereby underscore the severity of Respondent's earlier criminal conduct and to ensure Respondent remains on his current path toward rehabilitation.

14. Cause exists to discipline Respondent's medical license, pursuant to Business and Professions Code, section 2227, for violations of Business and Professions Code, sections 2236, subdivision (a), 2239, subdivisions (a) and (b), and 2234, for unprofessional conduct, namely convictions of substantially related crimes, as set forth in Factual Findings 1-21, and Legal Conclusions 1-13.

ORDER

Physician and Surgeon Certificate No. G 32652, issued to Respondent Frederick Raymond, is revoked, however, revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions:

Alcohol - Abstain From Use

1. Respondent shall abstain completely from the use of products or beverages containing alcohol.

Biological Fluid Testing

2. Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon the request of the Division or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and Respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

Alcohol Counseling Program

3(a). Within 30 calendar days from the effective date of this Decision, Respondent shall enroll and participate in an alcohol counseling program, other than the physician's diversion program, approved by the Division of Medical Quality (the Division), until the alcohol counseling program determines that further rehabilitation is no longer necessary. Upon enrollment, Respondent shall execute a release authorizing the alcohol counseling program to notify the Division of the following: 1) Respondent requires further rehabilitation; 2) Respondent no longer requires rehabilitation.

3(b). Failure to cooperate or comply with the identified alcohol counseling program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.

Notification

4(a). Prior to engaging in the practice of medicine Respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days of the effective date of this Decision.

4(b). This condition shall apply to any change(s) in hospitals, other facilities, or insurance carrier.

Supervision of Physician Assistants

5. During probation, Respondent is prohibited from supervising physician assistants.

Obey All Laws

6. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court-ordered criminal probation, payments, and other orders.

Quarterly Declarations

7. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

Probation Unit Compliance

8(a). Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

8(b). Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician and surgeon license.

8(c). Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

Interview with the Division or its Designee

9. Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals, and either with or without prior notice throughout the term of probation.

Residing or Practicing Out-of-State

10(a). In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Business and Professions Code sections 2051 and 2052.

10(b). All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions, with the exception of this condition and the following terms and conditions of probation: Obey All Laws and Probation Unit Compliance.

10(c). Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California totals two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

Failure to Practice Medicine - California Resident

11(a). In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Business and Professions Code sections 2051 and 2052.

11(b). All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

11(c). Respondent's license shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

Violation of Probation

12. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

License Surrender

13. Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The Division reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 calendar days, deliver Respondent's wallet and wall certificate to the Division or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

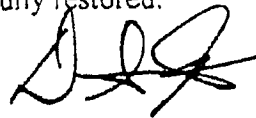
Probation Monitoring Costs

14. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

Completion of Probation

15. Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

Dated: October 2, 2007



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings